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August 5, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: February 5, 2008

Case Number: TSO-0615

This Decision concerns the eligibility of XXXXXX XXXXXXXX ("the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should be restored.

I. BACKGROUND

This administrative review proceeding began with the issuance of a Notification Letter by a Department of Energy (DOE) local security office (LSO), informing the Individual that information in the possession of the DOE created a substantial doubt pertaining to his eligibility for an access authorization.¹ See Notification Letter, February 11, 2008.

The Notification Letter cites the Individual's gambling problem as a security concern under Criteria H and L of the Part 710 regulations.² Specifically, the Letter cites various debts the Individual incurred due to his excessive gambling, including credit card debt, loans on his 401(k) plan, and other past due bills. The Letter states that the Individual lost as much as \$100,000 between the period "summer 2006 to July 2007" due to his gambling. According to the Letter, the Individual was also reprimanded and suspended from work for using his corporate credit card for gambling purposes. Finally, the letter refers to the Individual's hospitalization in July 2007 to seek help after contemplating suicide.

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

² Criterion H pertains to information that a person has "an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist causes, or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion L concerns refer to conduct tending to show that the Individual is "not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l).

As a result of his gambling problem and subsequent hospitalization, the Individual was referred to a DOE consultant-psychiatrist (“the psychiatrist”) for an evaluation. Following the October 2007 evaluation, the psychiatrist diagnosed the Individual with a Pathological Gambling Disorder.³ DOE Ex. 12. According to the psychiatrist, this disorder “has been a cause of significant defect in judgment or reliability in the past, and is likely to do so in the future.” *Id.*

Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. *See* Individual’s Letter, February 29, 2008. At the hearing, the Individual presented his own testimony as well as the testimony of his co-worker, his supervisor, and a DOE site psychologist. The DOE counsel presented the testimony of the psychiatrist.

II. HEARING TESTIMONY

A. The Individual

The Individual testified regarding his past gambling habits and his rehabilitation from his gambling problem. He stated that he stopped gambling in early July 2007. Transcript (“Tr.”) at 13. Prior to that time, he stated that he was “out of control.” *Id.* According to the Individual, gambling was “a total escape” and it did not matter if he won or lost. Tr. at 13-14. He lost approximately \$60,000 while gambling between 2006 and 2007. Tr. at 13. In addition, he took \$5,000 loans on his 401(k) savings account on two separate occasions to help finance his gambling habit. Tr. at 21. He also used his corporate credit card to obtain a \$1,000 cash advance to gamble. *Id.*

The Individual believed that depression played a large role in his gambling. Tr. at 15. He was first diagnosed with depression in 1988. *Id.* The Individual stated that he intended to commit suicide in July 2007 with several weeks’ worth of sleeping pills which he had saved. Tr. at 24. However, he approached his supervisor to tell him he was resigning but ended up telling his supervisor that he planned to commit suicide. Tr. at 24. The Individual added, “even though I knew I was pretty sick at the time, I didn’t want to die ... I knew that if I told him, something would happen and I would get help.” Tr. at 47. The Individual uses medication and therapy to handle his depression. He was on anti-depressant medication at the time he considered suicide, but the dosage was ineffective. Since that time, the dosage on his anti-depressant medication has been doubled and “it makes a big difference.” Tr. at 24.

After telling his supervisor of his plans to commit suicide, the Individual voluntarily checked himself into a hospital for six days. Tr. at 9-10. Following his release from the hospital, the Individual began an eight-week intensive outpatient program (IOP) in order to address his gambling addiction. Tr. at 10. The IOP consisted of twelve hours of therapy a week for eight weeks. Tr. at 25. Following the IOP, the Individual attended aftercare therapy sessions for seven weeks. *Id.* The Individual discussed his experience with the IOP and aftercare. He stated:

³ The psychiatrist noted that the Individual also meets the criteria for “Major Depression, Recurrent – Currently in Full Remission.” DOE Ex. 12. The psychiatrist determined that the Individual’s Major Depression disorder is not a cause of significant defect in judgment or reliability, but does worsen the prognosis for his Pathological Gambling Disorder. *Id.*

I learned more about myself during this period than any other time in my life. I learned coping skills and many other things to help live my life with depression and not to use addictions of one kind or another to escape reality. This program saved my life.

Tr. at 10. During the IOP, the Individual learned “more about coping skills and triggers, things that would set [him] off to gamble or other destructive behaviors, and [he] learned what caused them.” Tr. at 16.

The Individual stated that this period of abstinence from gambling is the first time he has made a conscious effort to quit. Tr. at 14. He attended Gamblers Anonymous (GA) meetings in the past, mostly due to pressure from his former wife. *Id.* He stated, “I knew I had a problem, but I didn’t want to face it in the past.” *Id.* He stated that this time is different because he had never gotten to the point of contemplating suicide in the past. He stated, “it was an eye-opener ... I just know that if I ever gamble again or if I get that way again, it will be life-threatening and I don’t want to go there ever again.” Tr. at 30.

The Individual currently attends GA meetings about once a week. Tr. at 17. He stated that his meeting is a small group of regulars that generally has a low relapse rate. Tr. at 43. He currently does not have a sponsor, but there are individuals he could approach and he has considered doing so. Tr. at 38-39. In addition to his GA meetings, the Individual stated that he has a good support system. He has a phone list of individuals from GA and his aftercare program that he can call if he needs to talk to someone. Tr. at 26. He also has “a good network of old friends” who are aware of his gambling problem. *Id.* His co-workers are all aware of his history as well. *Id.* In addition, he has a new girlfriend whom he sees regularly. *Id.* Finally, he has “an old high school friend” who knows all of his history and they talk everyday and “it helps a lot.” *Id.*

The Individual stated that he intends to never gamble again, regardless of whether his security clearance is restored. He stated, “my life is more important than my clearance.” Tr. at 44. The Individual stated that he realized that he “can never gamble again for anything, on anything, about anything ... I realize that if I do start gambling again it’s going to cost me my life.” Tr. at 23. The Individual stated that he no longer even participates in football pools with co-workers. Tr. at 19. He added that he is in a golf league where all of the players contribute one dollar to the pot and the winner for the day wins the pot. The Individual no longer contributes money into that pot and, if he wins the game on a particular day, he does not take the winnings because that would be gambling. Tr. at 23.

The Individual states that although he still experiences some of the same feelings that used to drive him to gamble, he no longer experiences the urge to gamble. Tr. at 45-46. He stated that sometimes simply recognizing that a particular feeling or event is a trigger for him is enough to let him handle the situation. *Id.* The Individual could not think of anything that would drive him to gamble. Tr. at 46. For example, he stated that he experienced a recent “rocky” period with his girlfriend, but he handled it by calling friends and talking about the problem; he “didn’t internalize it.” Tr. at 48.

The Individual stated that he is current on his routine financial obligations but still has residual credit card debt from his gambling. Tr. at 30-31. He paid off one of the \$5,000 loans on his 401(k) and the other will be “paid off this year.” *Id.* He approximates his total remaining debt at about \$30,000. *Id.* He stated that much of the money he lost was from an inheritance left to him by his deceased sister. Tr. at 32. Regarding the use of his corporate credit card, the Individual stated that he informed his supervisor that he had improperly used the card. He was reprimanded for it and has paid back the amount he borrowed. Tr. at 21.

B. The Individual’s Supervisor

The Individual’s supervisor has known the Individual since he was hired in 2001. Tr. at 80. He sees the Individual every day at work and has interacted with him outside of work on occasion. Tr. at 81. The supervisor stated that the Individual’s gambling never impacted his work. Tr. at 82, 84. He described the Individual as “very competent” and “reliable at work.” Tr. at 83. He stated that the Individual’s performance at work has been “very steady.” Tr. at 86.

The supervisor helped the Individual address his gambling problem and suicidal thoughts. He stated that the Individual came to his office and told him “some very personal things about how he felt, he felt suicidal, he felt at wits’ end.” Tr. at 84, 85-86. Initially, the Individual told him about his improper use of his corporate card. The Individual did not know what to do and decided his best option was to resign. Tr. at 91-92. Then they continued talking and the Individual told him that he felt suicidal. *Id.* The supervisor told the Individual that he would not let him leave the office until they figured out what they were going to do. Tr. at 84-85. Following their conversation, the Individual admitted himself into a hospital. Tr. at 85. The Individual kept his supervisor informed of his progress. Tr. at 92.

According to the supervisor, the Individual felt comfortable with the treatment he received and believed he was responding well. Tr. at 93. He stated, “the individuals who were helping him really understood him.” *Id.* In addition, the Individual met “some of the individuals ... that were going through treatment, as well, and he may have made some friends there that were going through similar difficulties and made some connections that he’s never had before.” *Id.*

The supervisor did not know when the Individual last gambled. Tr. at 94. He stated, however, that he knows the Individual no longer plays for money in his golf league. Tr. at 94-95. The supervisor believes it unlikely that the Individual will return to gambling. Tr. at 95.

C. The Individual’s Co-worker

The Individual’s co-worker has known the Individual for four or five years, since the Individual joined their department. Tr. at 52. They also occasionally interact outside of work. *Id.* The co-worker is aware of the Individual’s gambling problem. Tr. at 53. He never saw any indication that the Individual was gambling at work or that his gambling was interfering with his work. Tr. at 54.

The co-worker described the Individual as “a very dedicated worker ...he always does a good job with what he’s doing, regardless of what his personal state is at the time.” Tr. at 54. For

example, the Individual had a significant injury which required surgery. Prior to the surgery, the Individual was in pain but did not let it interfere with his work. Tr. at 54-55. The co-worker stated that he and the Individual had discussions about gambling and that he never got the impression that the Individual was trying to hide anything from him. Tr. at 64.

The Individual's co-worker stated that he has seen a "vast improvement" in the Individual in the last year. Tr. at 66. The Individual "sought help with his gambling problem, professional help ... he's gone to therapists and psychiatrists and asked for help, because he knows he has a problem, and he's really trying hard to do the right thing and deal with it." *Id.* The co-worker added that he never doubted the Individual's judgment or reliability in general, particularly with work-related matters. Tr. at 69. He added that the Individual is "brutally honest, even to his own detriment ... he doesn't really have anything to hide that I've ever seen." Tr. at 76.

The co-worker also stated that, to his knowledge, the Individual no longer gambled. Tr. at 75. The Individual attends GA meetings and has benefitted from them. Tr. at 77. He stated that the Individual has told him that he no longer feels the need to gamble. Tr. at 78.

D. The Site Psychologist

The site psychologist first saw the Individual in September 2004 in connection with his participation in the site's Human Reliability Program (HRP). Tr. at 101. At that time, he found that the Individual "carried a diagnosis of depression and ... a history of some gambling problems." Tr. at 102. Following the Individual's hospitalization in July 2007, the psychologist began meeting with the Individual monthly. *Id.* He stated that, following the Individual's hospitalization, he was removed from HRP. He stated, "medically and psychologically, we recommended that he maintain his removal for – usually we like to see about six months and then once we reach the six-month point ... I did make a recommendation to our medical director that he be reinstated into the HRP ... with regular monthly psychological monitoring." Tr. at 104-105.

The psychologist discussed his assessment of the Individual's progress. He stated that, initially, he was not sure whether the Individual was "going to make it or not." Tr. at 106. However, he "was very impressed early on with [the Individual's] proactive stance that [he] took in terms of seeking assistance," including his enrollment in the IOP, his attendance at GA meetings, and his "ongoing commitment to continue [his] treatment for depression." Tr. at 106. The psychologist believed the Individual learned about his trigger behaviors and "the kinds of things that have contributed to the prior gambling problem." Tr. at 107.

The psychologist stated, "my view is that [the Individual] has done an excellent job in terms of addressing his issues, and my view is that he's doing quite well with respect to his recovery for his gambling issue, and that his depression is being well treated." Tr. at 102. He described the Individual's prognosis as "excellent." Tr. at 108. He added:

If we would have been talking last July or August, I'm not sure I would have said that, because I was concerned that he was going to return to this type of behavior, but I think he ... has done very well ... I think the IOP was a real turnaround for

him in terms of break through a lot of the patterns of denial and [avoidance] that he was showing before.

Tr. at 108. He added that he believed the Individual's risk of relapse was "low." Tr. at 108.

E. The Psychiatrist

The psychiatrist stated that when he evaluated the Individual in October 2007, he found that the Individual's "pathological gambling problem ... caused a significant defect in his judgment and reliability." Tr. at 116. The psychiatrist found that, in order to show rehabilitation, abstinence from gambling was necessary, as well as "other treatments that you can get for dealing with pathological gambling that basically increase the odds that you're going to be able to not gamble." *Id.* The psychiatrist did not feel that the Individual demonstrated sufficient evidence of rehabilitation during his evaluation. At that point, although the psychiatrist felt that the Individual was in a good treatment program, the Individual had only been abstinent from gambling for approximately three months, which the psychiatrist felt was insufficient. Tr. at 121. The psychiatrist stated that, generally, he recommends one year of abstinence from gambling before determining that an individual is rehabilitated. He stated that if an individual can make it through one year, his prognosis for remaining abstinent from gambling increases. Tr. at 123.

After listening to the hearing testimony, the psychiatrist did not alter his diagnosis of the Individual. Tr. at 124. However, he stated that he did alter his opinion regarding whether the Individual demonstrated rehabilitation. He stated that the fact that the Individual is no longer gambling is very positive. Tr. at 126. Other positives were that the Individual is in a good relationship and his mood "looks better." Tr. at 127. Additionally, the Individual continues to take his anti-depressant medication and "continues to have a normal mood on a new medication regiment." *Id.* When the dosage of the Individual's medication was doubled, the Individual "has a substantially better improvement in the control of his depressive disorder, and that ... is what then makes his pathological gambling disorder more firmly in hand." Tr. at 128. The psychiatrist also felt that the fact that the Individual continued attending GA meetings was "a big plus." *Id.* Finally, he believed it was significant that the site psychologist, a clinician who knows the Individual well, also found the Individual's prognosis to be excellent and his risk of relapse low. *Id.*

Based on all of these factors, the psychiatrist concluded that "at this point in time ... there is adequate evidence of rehabilitation or reformation from his pathological gambling disorder." Tr. at 129. He added, "I think his risk is, at this point in time, low to fall back into that disorder." *Id.* The psychiatrist also believed that the Individual's defect in judgment and reliability had resolved itself and was "almost completely tied to the pathological gambling issue." Tr. at 134. He added, "outside of pathological gambling and how it affected him, I thought [the Individual's] judgment and reliability had been good and continues to be good." Tr. at 135. He did not believe that the Individual's depression was, in and of itself, "severe enough to affect his judgment and reliability." *Id.*

III. STANDARD OF REVIEW

The regulations governing the Individual's eligibility for an access authorization are set forth in 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." An individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* See generally *Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security clearance determinations should err, if they must, on the side of denials").

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a).

IV. ANALYSIS

A. The Security Concerns – Criteria H and L

Security concerns raised under Criterion H indicate that a person has "an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist causes, or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h); see also Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (the Adjudicative Guidelines), Guideline I, ¶ 27. In this case, in invoking Criterion H, the local security office (LSO) relied on the psychiatrist's determination that the Individual met the criteria for Pathological Gambling Disorder.

Criterion L concerns pertain to conduct calling into question an individual's honesty, reliability, or trustworthiness, or which "furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l); see also the Adjudicative

Guidelines, Guideline E, ¶¶ 15, 16 (d), (e). In invoking Criterion L, the LSO cited the Individual's July 2007 hospitalization, his significant monetary losses and various debts incurred as a result of his gambling, and his misuse of his corporate credit card.

The Individual did not dispute the matters giving rise to the Notification Letter. Given the Individual's well-documented gambling problem and the psychiatrist's diagnosis, I find that the LSO properly invoked Criteria H and L. The only question remaining is whether the Individual has presented sufficient information to adequately mitigate the security concerns. In this case, because the Criteria H and L concerns are tied to the Individual's gambling, I will address them together.

B. Mitigating Factors

The adjudicative guidelines discuss ways to mitigate security concerns. Regarding mitigation of concerns raised by psychological disorders or conditions demonstrating defects in judgment or reliability, the guidelines cite as a mitigating condition that "the individual has voluntarily entered a counseling or treatment program ... and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional." Adjudicative Guidelines, Guideline I, ¶ 29(b). Another mitigating condition may be a "recent opinion by a duly qualified mental health professional ... that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation." *Id.*, Guideline I, ¶ 29(c). Regarding concerns raised by an individual's conduct, one mitigating factor may be that "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur." *Id.*, Guideline E, ¶ 17(d).

In this case, the Individual has taken several positive steps to address his gambling problem. First, he has refrained from gambling for one year and, by his testimony, intends to remain abstinent from gambling. Additionally, the Individual sought help for his problem – first, by approaching his supervisor, then by enrolling in the IOP, and finally, by attending GA meetings. The Individual took each of these steps of his own initiative in an effort to address his problem. I was particularly impressed by the Individual's own testimony. He appears to have gained insight into his problem and has a strong desire to refrain from gambling to protect his mental and physical health, separate and apart from the security clearance review process. He also stated that he has developed a strong support network by reaching out to friends, co-workers and other GA members.

In addition to his own testimony, the Individual presented testimony of witnesses who know him well and are familiar with his situation. His co-worker/friend noticed an improvement in the Individual since July 2007 and believes that the Individual is taking the necessary steps to address his gambling problem. The Individual's supervisor noted that the Individual approached him voluntarily and informed him about the misuse of his corporate card and asked for help. The supervisor felt that the Individual identified with his treatment and gained insight into his problem.

Further, I found the testimony of the site psychologist and the psychiatrist to be particularly persuasive. Notably, both the site psychologist and the psychiatrist had their doubts as to whether the Individual would be successful in rehabilitating from his gambling problem. However, both were impressed by the Individual's progress and commitment to his treatment. The psychiatrist believed that, as of the hearing, the Individual demonstrated adequate evidence of rehabilitation or reformation. According to both the site psychologist and the psychiatrist, the Individual's risk of relapse was low. *See Personnel Security Hearing*, Case No. TSO-0298, 29 DOE ¶ 82,905 (2005).

Regarding the concerns associated with the Individual's conduct itself, specifically his use of his corporate credit card to help finance his gambling, I find that the conduct was the direct result of the Individual's Pathological Gambling Disorder and not an independent security concern. This finding is supported by the psychiatrist's testimony that the Individual's defect in judgment and reliability was "almost completely tied to the pathological gambling issue" and was unlikely to recur independent of the gambling.

Based on the record, I am convinced by the assessments of the site psychologist and the psychiatrist that there is a low risk that the Individual's pathological gambling disorder will create a significant defect in his judgment or reliability in the future. Accordingly, I find that the Individual has resolved the security concerns cited in the Notification Letter.

V. CONCLUSION

Upon consideration of the record in this case, I find that there was evidence that raised a doubt regarding the Individual's eligibility for a security clearance under Criteria H and L. I also find that there is sufficient evidence in the record to fully resolve that doubt. Therefore, I conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I conclude that the Individual's access authorization should be restored.

Diane DeMoura
Hearing Officer
Office of Hearings and Appeals

Date: August 5, 2008